IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3607 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANSINH HIMATSINH BARAD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3607 of 1990

MR KETAN A DAVE for Petitioner No. 1

MR AJ DESAI, AGP. for Respondents No. 1-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 19/02/2002

ORAL JUDGEMENT

1 The petitioner who was appointed as Constable in the State Reserve Police in 1964 was serving as Armed Police Constable at the relevant time in Savarkundla

Taluka, District Bhavnagar. It appears that a Criminal Case bearing No.861/87 was filed in the Court of J.M.F.C., Savarkundla under Section 66(B)(1) and Section 85(1) of the Bombay Prohibition Act. The said case resulted in conviction vide judgment and order dated 20/4/1989. The petitioner filed Criminal Appeal No.18 of 1989 before the Court of Sessions Judge, Bhavnagar and during pendency of the appeal the petitioner was dismissed from service by order dated 9/3/1990 having been convicted by the Criminal Court. It is the aforesaid order of dismissal dated 9/3/1990 at Annexure "B" which is under challenge in the present petition.

2 At the time of hearing Mr.Ketan Dave, learned Advocate for the petitioner submitted that he has received information from the Advocate representing the petitioner on criminal side, that the Criminal Appeal has resulted in acquittal of the petitioner, however, in the intervening period the petitioner has passed away. Mr.Dave fairly admitted that he is not in a position to substantiate the said statement in absence of any instructions from the petitioner, because he does not have present address of the petitioner. Mr.A.J.Desai, learned Assistant Government Pleader appearing on behalf of the respondents submitted that in absence of any evidence of acquittal the impugned order of dismissal should not be interfered with.

3 In view of the aforesaid peculiar position and facts and taking into consideration that the matter is pending since 1990, in the interest of justice it would be open to the heirs of the petitioner, in case he has expired, to move the appropriate authority by way of representation bringing the so called fact of acquittal of the petitioner to the notice of the authority and further, it would be open to produce necessary order and documents in support of the same before the authority. In case these documents are produced before the authority concerned the said authority shall take the same into consideration and pass appropriate order in place of the impugned order at Annexure "B" dated 9/3/1990.

4 With the aforesaid observations the petition stands disposed of. Rule is discharged. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt